

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DANIEL J. BULFER,

Plaintiff,

vs.

PATRICK DOBBINS, DAVID ISLEY,
MANUEL GARCIA, et al.,

Defendants.

CASE NO. 09-CV-1250 JLS (POR)

**ORDER: (1) GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT;
(2) DENYING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

(Doc. Nos. 13, 14)

Presently before the Court are Plaintiff's motion for partial summary judgment (Doc. No. 13) and Defendants' motion for summary judgment or, in the alternative, partial summary judgment (Doc. No. 14). Also before the Court are the parties' respective oppositions and replies. (Doc. Nos. 16 (Pl.'s Opp'n), 17 (Defs.' Opp'n), 18 (Defs.' Reply), 19 (Pl.'s Reply).) Having reviewed the parties arguments and the law, the Court **GRANTS** Defendants' motion and **DENIES** Plaintiff's motion.

BACKGROUND

On April 19, 2008, Plaintiff Daniel J. Bulfer (Plaintiff) attended a dance on the campus of the University of California San Diego (UCSD). (Doc. No. 1 (Compl.) ¶ 6.) Plaintiff drove to the UCSD campus. (Doc. Nos. 14-3 to -11 (De La Cruz Decl. ISO MSJ) Ex. B (Bulfer Dep.), at 33.) Before entering the dance, Plaintiff drank vodka and orange juice in his car. (*Id.* at 26, 30-33; Doc. Nos. 13-2

1 to -6 (Marrinan Decl. ISO MSJ) Ex. 1 (Bulfer Dep.),¹ at 35–37.) Plaintiff drank between thirty-five
 2 and forty-five percent of a bottle of vodka. (Bulfer Dep. at 34–35, 37; Doc. No. 17-1 (Bulfer Decl.)
 3 ¶ 5.) Plaintiff then proceeded to the dance. (*See* Compl. ¶ 7.)

4 At about 11:15 p.m, Plaintiff and his friend, Cody Harrison, left the dance to talk in Plaintiff's
 5 car. (Compl. ¶ 7; Bulfer Dep. 41.) When they got to the car, Plaintiff sat in the driver's seat and Mr.
 6 Harrison sat in the passenger's seat. (Compl. ¶ 7.) Plaintiff and Mr. Harrison talked and listened to
 7 a CD for about an hour. (Bulfer Dep. 41–43.)

8 Meanwhile, Defendant Patrick Dobbins (Officer Dobbins), a patrol officer with the UCSD
 9 Police Department, was on vehicle patrol. (Marrinan Decl. ISO MSJ Ex. 2 (Dobbins Dep.),² at 57.)
 10 At about 12:30 a.m. on April 20, 2008, Officer Dobbins noticed a parked car with its taillights
 11 illuminated. (Compl. ¶ 8; Dobbins Dep. 57.) Officer Dobbins parked at the far end of the parking lot
 12 to observe the car. (Dobbins Dep. 61–62.) After about five minutes, Officer Dobbins approached the
 13 car and knocked on the driver's window. (Compl. ¶ 8; Bulfer Dep. 54; Dobbins Dep. 61–62, 67–68,
 14 71–72.) Plaintiff opened the car door, and Officer Dobbins asked whether Plaintiff and his passenger,
 15 Mr. Harrison, were okay. (Compl. ¶ 9; Bulfer Dep. 57–58; Dobbins Dep. 72.) Plaintiff explained that
 16 he and Mr. Harrison were sitting in the car to allow Mr. Harrison time to calm down after an
 17 unpleasant incident in the dance. (Compl. ¶ 9; Bulfer Dep. 57–58; Dobbins Dep. 72–73.)

18 Because he smelled alcohol, Officer Dobbins asked whether Plaintiff had been drinking.
 19 (Compl. ¶ 9; Bulfer Dep. 57–58; Dobbins Dep. 73.) Plaintiff responded in the affirmative. (Compl.
 20 ¶ 9; Bulfer Dep. 58; Dobbins Dep. 76.) Officer Dobbins suspected Plaintiff of driving under the
 21 influence and, accordingly, asked Plaintiff to step out of the car for a field sobriety test. (Compl. ¶ 10;
 22 Dobbins Dep. 77–79.) Based on Plaintiff's performance during the field sobriety test, Officer Dobbins
 23 determined that Plaintiff was impaired by alcohol. (Compl. ¶ 10; Dobbins Dep. 86.) Officer Dobbins

25 ¹ Plaintiff and Defendants have submitted portions of Plaintiff's deposition in support of their
 26 respective motions. (*See also* Doc. No. 18-1 (De La Cruz Decl. ISO Reply) Ex. A (Bulfer Dep.).) The
 Court refers to these exhibits, collectively, as "Bulfer Dep."

27 ² The Court's citations to Officer Dobbins's deposition refer to the complete copy submitted
 28 in support of Plaintiff's motion. Defendants have also submitted portions of Officer Dobbins's
 deposition in support of their motion. (*See* De La Cruz Decl. ISO MSJ Ex. C (Dobbins Dep.).) The
 Court refers to these exhibits, collectively, as "Dobbins Dep."

1 asked Plaintiff to take a preliminary alcohol screening test, but Plaintiff refused. (Compl. ¶ 10; Bulfer
 2 Dep. 86–87; Dobbins Dep. 86–87.) At that point, Officer Dobbins placed Plaintiff under arrest for
 3 driving under the influence of alcohol and placed him in a patrol car. (Compl. ¶ 10; Bulfer Dep.
 4 86–87; Dobbins Dep. 87–88.)

5 During Officer Dobbins’s contact with Plaintiff, Defendants Manuel Garcia (Corporal Garcia),
 6 a corporal with the UCSD Police Department, and David Isley, a sergeant with the UCSD Police
 7 Department, arrived on the scene. (Marrinan Decl. ISO MSJ Ex. 4 (Garcia Dep.),³ at 20, 23; De La
 8 Cruz Decl. ISO MSJ Ex. E (Isley Dep.), at 5, 22.) While Officer Dobbins was evaluating Plaintiff,
 9 Sergeant Isley walked around Plaintiff’s car. (Isley Dep. 29.) Through the driver’s side window,
 10 Sergeant Isley saw a knife in a sheath wedged between the door and the driver’s seat. (*Id.* 29–30.)

11 After Officer Dobbins placed Plaintiff under arrest, Corporal Garcia offered to secure
 12 Plaintiff’s car. (Garcia Dep. 48.) Officer Dobbins asked Corporal Garcia to secure the car, and
 13 Corporal Garcia went to the car to look for the keys. (*Id.* at 48–49.) The keys were not in the ignition,
 14 so Corporal Garcia looked around the car’s passenger compartment for one to two minutes. (*Id.* at
 15 49–51.) While he was looking for the keys, Corporal Garcia noticed orange juice containers and an
 16 alcohol bottle on the passenger’s side floor board. (*Id.* at 52–54.) Corporal Garcia removed the
 17 bottles from the car and notified Officer Dobbins of his discovery. (*Id.* at 54–56.) After Corporal
 18 Garcia removed the bottles from the car, Sergeant Isley directed Corporal Garcia to check the driver’s
 19 side floorboard. (*Id.* at 57, 61; *see* Isley Dep. 71.) On inspection of the driver’s side floorboard,
 20 Corporal Garcia found a knife in a sheath. (Garcia Dep. 58–60.) Corporal Garcia eventually turned
 21 the knife and the bottles over to Officer Dobbins to be processed and entered into evidence. (*Id.* at
 22 62–63.)

23 Plaintiff was taken into custody and booked into county jail. (Compl. ¶ 13.) Plaintiff was later
 24 arraigned on misdemeanor charges of possession of a knife on a university campus, *see* Cal. Penal
 25 Code § 626.10(b), and driving under the influence, *see* Cal. Veh. Code § 23152. (Compl. ¶ 14; Bulfer

27 ³ As above, the Court’s citations to Officer Garcia’s deposition refer to the complete copy
 28 submitted in support of Plaintiff’s motion. Defendants have also submitted portions of Officer
 Garcia’s deposition in support of their motion. (*See* De La Cruz Decl. ISO MSJ Ex. D (Garcia Dep.).)
 The Court refers to these exhibits, collectively, as “Garcia Dep.”

1 Dep. 100.) Plaintiff was also referred to the DMV for possible sanctions. (Compl. ¶ 14.) The
 2 criminal and administrative charges against Plaintiff were later dismissed. (Compl. ¶ 14; *see also*
 3 Bulfer Dep. 101; Bulfer Decl. ¶¶ 19–20.)

4 On June 9, 2009, Plaintiff filed this civil action against Defendants alleging violations of his
 5 Fourth Amendment rights, negligence, false arrest, and violation of California Civil Code section 52.1.
 6 (*See* Compl.) Defendants answered Plaintiff’s complaint on September 11, 2009. (Doc. No. 3
 7 (Answer).) On August 30, 2010, both parties moved for summary judgment. (Doc. Nos. 13, 14.)

8 LEGAL STANDARD

9 Federal Rule of Civil Procedure 56 permits a court to grant summary judgment where (1) the
 10 moving party demonstrates the absence of a genuine issue of material fact and (2) entitlement to
 11 judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). “Material,” for
 12 purposes of Rule 56, means that the fact, under governing substantive law, could affect the outcome
 13 of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Freeman v. Arpaio*, 125 F.3d
 14 732, 735 (9th Cir. 1997). For a dispute to be “genuine,” a reasonable jury must be able to return a
 15 verdict for the nonmoving party. *Anderson*, 477 U.S. at 248.

16 The initial burden of establishing the absence of a genuine issue of material fact falls on the
 17 moving party. *Celotex*, 477 U.S. at 323. The movant can carry his burden in two ways: (1) by
 18 presenting evidence that negates an essential element of the nonmoving party’s case; or (2) by
 19 demonstrating that the nonmoving party “failed to make a sufficient showing on an essential element
 20 of her case with respect to which she has the burden of proof.” *Id.* at 322–23. “Disputes over
 21 irrelevant or unnecessary facts will not preclude a grant of summary judgment.” *T.W. Elec. Serv., Inc.*
 22 *v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

23 Once the moving party establishes the absence of genuine issues of material fact, the burden
 24 shifts to the nonmoving party to set forth facts showing that a genuine issue of disputed fact remains.
 25 *Celotex*, 477 U.S. at 324. The nonmoving party cannot oppose a properly supported summary
 26 judgment motion by “rest[ing] on mere allegations or denials of his pleadings.” *Anderson*, 477 U.S.
 27 at 256. When ruling on a summary judgment motion, the court must view all inferences drawn from
 28 the underlying facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co.*

1 *v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

2 **DISCUSSION**

3 Plaintiff contends that he is entitled to summary judgment, as to liability only, on his federal
4 claim for unlawful seizure and his state law claim for false arrest. (Doc. No. 13-1 (Pl.’s Mem. ISO
5 MSJ), at 9–16.) Defendants, on the other hand, contend that they are entitled to summary judgment
6 on all of Plaintiff’s claims. (Doc. No. 14-1 (Defs.’ Mem. ISO MSJ), at 6–24.) The Court addresses
7 each claim in turn.

8 **1. Federal Claim**

9 Plaintiff’s federal claim under 42 U.S.C. § 1983 alleges that Defendants violated his Fourth
10 Amendment rights in three distinct ways. (*See* Compl. ¶¶ 15–21.) First, Plaintiff alleges that he was
11 unlawfully seized without a warrant or probable cause. (Compl. ¶ 16.) Second, Plaintiff alleges that
12 Defendants unlawfully searched his car. (Compl. ¶ 17.) Third, Plaintiff alleges that Defendants
13 caused him to be falsely charged with criminal violations and subjected to possible DMV sanctions.
14 (Compl. ¶ 18.)

15 **A. Legal Standards**

16 **(1) 42 U.S.C. § 1983**

17 42 U.S.C. § 1983 provides a cause of action against any person who, under color of state law,
18 deprives another of any rights, privileges or immunities secured by the Constitution and laws of the
19 United States. Section 1983 is not a source of substantive rights but merely a method for vindicating
20 federal rights established elsewhere. *Graham v. Connor*, 490 U.S. 386, 393–94 (1989). To succeed
21 on a claim under § 1983, a plaintiff must show “(1) that a right secured by the Constitution or the laws
22 of the United States was violated, and (2) that the alleged violation was committed by a person acting
23 under color of State law.” *Long v. Cnty. of L.A.*, 442 F.3d 1178, 1185 (9th Cir. 2006).

24 **(2) Qualified Immunity**

25 Qualified immunity is a question of law. *Johnson v. Cnty. of L.A.*, 340 F.3d 787, 791 (9th Cir.
26 2003); *Nunez v. Davis*, 169 F.3d 1222, 1229 (9th Cir. 2000). Its basic purpose is “to spare individual
27 officials the burdens and uncertainties of standing trial in those instances where their conduct would
28 strike an objective observer as falling within the range of reasonable judgment.” *Gooden v. Howard*

1 Cnty., 954 F.2d 960, 965 (4th Cir. 1992) (citing *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)).
 2 “The doctrine of qualified immunity protects government officials from liability for civil damages
 3 insofar as their conduct does not violate clearly established statutory or constitutional rights of which
 4 a reasonable person would have known.” *Pearson v. Callahan*, — U.S. —, 129 S. Ct. 808, 815 (2009)
 5 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, (1982)). The test for determining whether a
 6 defendant enjoys qualified immunity has two prongs: (1) taken in the light most favorable to the party
 7 asserting the injury, do the facts alleged show the officer’s conduct violated a constitutional right, and
 8 (2) was that constitutional right clearly established in the context faced by the defendant? *Saucier v.*
 9 *Katz*, 533 U.S. 194, 201 (2001). If a plaintiff cannot make this showing, the official is entitled to
 10 qualified immunity. *See Pearson*, 129 S. Ct. at 818.

11 **B. Unlawful Seizure**

12 As to Plaintiff’s unlawful seizure claim, the Court begins by determining whether Defendants,
 13 taking the facts in the light most favorable to Plaintiff, violated Plaintiff’s constitutional rights.
 14 Specifically, the Court must determine whether Defendants’ “actions [were] ‘objectively reasonable’
 15 in light of facts and circumstances confronting them, without regard to their underlying intent or
 16 motivation.” *Graham*, 490 U.S. at 397.

17 (1) *Whether Officer Dobbins’s Initial Contact with Plaintiff Was a Detention*

18 Plaintiff first argues that Officer Dobbins’s initial contact with Plaintiff was an
 19 unconstitutional detention without reasonable suspicion. (Pl.’s Mem. ISO MSJ 10–11; Pl.’s Opp’n
 20 6–7; Pl.’s Reply 1–2.) Defendants, on the other hand, contend that Plaintiff’s detention was a
 21 consensual encounter for which no reasonable suspicion was required. (Defs.’ Mem. ISO MSJ 7;
 22 Defs.’ Opp’n 4–5; Defs.’ Reply 3–4.)

23 Police–citizen contact implicates the Fourth Amendment when, “taking into account all of the
 24 circumstances surrounding the encounter, the police conduct would ‘have communicated to a
 25 reasonable person that he was not at liberty to ignore the police presence and go about his business.’”
 26 *Florida v. Bostick*, 501 U.S. 429, 437 (1991) (quoting *Michigan v. Chesternut*, 486 U.S. 567, 569
 27 (1988)); *see also United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (“[A] person has been
 28 ‘seized’ within the meaning of the Fourth Amendment only if, in view of all of the circumstances

1 surrounding the incident, a reasonable person would have believed that he was not free to leave.”).
2 However, “a seizure does not occur simply because a police officer approaches an individual and asks
3 a few questions.” *Bostick*, 501 U.S. at 434; *accord Florida v. Royer*, 460 U.S. 491, 497 (1983)
4 (“[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an
5 individual on the street or in another public place, by asking him if he is willing to answer some
6 questions, [or] by putting questions to him if the person is willing to listen”); *United States v.*
7 *Washington*, 490 F.3d 765, 770 (9th Cir. 2007) (“It is well established . . . that the Fourth Amendment
8 is not implicated when law enforcement officers merely approach an individual in public and ask him
9 if he is willing to answer questions.”). “This is true whether an officer approaches a person who is
10 on foot or a person who is in a car parked in a public place.” *Washington*, 490 F.3d at 770.

11 If an officer merely walks up to a person who is seated in a car in a public place and asks him
12 a question, this alone does not constitute a seizure. *See* 4 Wayne R. LaFare, *Search and Seizure*
13 § 9.4(a) (4th ed. 2004). In *United States v. Kim*, 25 F.3d 1426, 1428 (9th Cir. 1991), DEA agents
14 received a tip that an individual would be carrying a briefcase containing methamphetamine in a
15 certain Honolulu neighborhood. An agent saw Kim and a companion exit from a shop carrying a
16 suitcase and seat themselves in a parked car. *Id.* Responding to the first agent’s call, another agent
17 “parked his unmarked car so as to partially block the egress of Kim’s vehicle.” *Id.* The agent
18 approached the driver’s side door, identified himself, and asked the occupants for their identification.
19 *Id.* The agent then asked the occupants to step out of the car for further questioning and received
20 consent to search the suitcase. *Id.* After finding the suitcase empty, the agent noticed an unidentified
21 object protruding from Kim’s pocket. *Id.* at 1428–29. Kim turned the object over to the agent, who
22 determined that the object contained methamphetamine. *Id.* at 1429.

23 On appeal, Kim contended that the methamphetamine that the agent seized was the product
24 of an unlawful investigatory stop. *Id.* The Ninth Circuit disagreed and held that “the contact between
25 DEA agents and Kim . . . did not rise to the level of an investigatory stop,” *id.* at 1429, because the
26 agents did not act forcefully or aggressively toward Kim, *id.* at 1430. Nor did the encounter rise to
27 the level of a stop because the agents partially blocked Kim’s egress with his automobile. *Id.* at 1431
28 & n.2. Although the court was “mindful that police interrogation of automobile occupants typically

1 involves a greater degree of intrusiveness than questioning of pedestrians,” the court held that
 2 “where . . . officers come upon an already parked car, this disparity between automobile and
 3 pedestrian stops dissipates . . .” *Id.* at 1430.

4 Following *Kim*, the Ninth Circuit held in *Washington* that suspicionless police questioning of
 5 an individual in a parked car did not constitute a Fourth Amendment stop. 490 F.3d at 770. The court
 6 noted several factors in support of its conclusion: (1) that the officer parked his car a full car length
 7 behind the individual’s car so as not to block it, (2) that the officer did not touch his gun or baton
 8 during the encounter, (3) that the officer did not brandish his flashlight as a weapon, (4) that the
 9 officer approached the individual’s car on foot, (5) that the officer’s initial questioning was brief, and
 10 (6) that the officer was cordial and courteous. *Id.* “Under these circumstances, the district court
 11 correctly concluded that a reasonable person would have felt free to terminate the encounter and
 12 leave.”⁴ *Id.*; see also *United States v. Summers*, 268 F.3d 683, 687 (9th Cir. 2001) (holding that
 13 interaction with occupant of a parked car did not rise to the level of a stop where car was partially
 14 blocked, officer requested identification from individual, and officer asked for car’s paperwork as a
 15 way to identify the individual).

16 Here, the Court finds that Officer Dobbins’s initial contact with Plaintiff did not rise to the
 17 level of a constitutional seizure. As in *Kim* and *Washington*, Officer Dobbins only partially blocked
 18 Plaintiff’s car. (See De La Cruz Decl. ISO Reply Ex. B (diagram by Plaintiff depicting the locations
 19 of Plaintiff’s and Officer Dobbins’s cars during the encounter).) Officer Dobbins approached the
 20 driver’s side of Plaintiff’s car on foot, identified himself, and asked Plaintiff two questions—whether
 21 Plaintiff was okay and whether Plaintiff had been drinking. (Compl. ¶9; Bulfer Dep. 57–58; Dobbins
 22

23 ⁴ As the Ninth Circuit noted in *Kim*, “other circuits in factually similar cases have consistently
 24 held that an officer’s approach of a car parked in a public place does not constitute an investigatory
 25 stop or higher echelon Fourth Amendment seizure.” 25 F.3d at 1430 n.1; see, e.g., *United States v.*
 26 *Griffith*, 533 F.3d 979, 983 (8th Cir. 2008) (affirming district court finding that encounter with
 27 individuals in parked car did not constitute stop where officers did not impede individual’s ability to
 28 drive away, did not draw their weapons, and did not demand that individuals comply with
 investigation); *United States v. Williams*, 413 F.3d 347, 352 (3d Cir. 2005) (“[T]here was no seizure
 because there was no use of physical force, nor was there any show of authority when the police
 approached the van in their marked cruiser, exited their vehicle, and approached the parked van on
 foot.”); *Latta v. Keryte*, 118 F.3d 693, 700–01 (10th Cir. 1997) (finding no seizure where officer
 approached parked car, asked occupant whether he was okay and to get out of the car, and asked for
 occupant’s identification).

Dep. 72–73.) Officer Dobbins did not brandish his flashlight as a weapon, touch his gun or baton, or otherwise act forcefully or aggressively toward Plaintiff. Rather, Officer Dobbins was “generally professional” during his encounter with Plaintiff. (Bulfer Dep. 88; *see also id.* at 88–89 (stating that nothing about Officer Dobbins’s behavior was “abusive in nature”).) Plaintiff could have terminated the encounter by opening his door and walking away. (*See id.* at 62 (stating that, during the encounter, Officer Dobbins stood “to the rear of” Plaintiff’s door).) Under these circumstances, “a reasonable person would have felt free to terminate the encounter and leave.”⁵ *Washington*, 490 F.3d at 770; *see also United States v. Robson*, 2007 WL 3232524, at *4 (D. Nev. Oct. 30, 2007) (“Raynolds approached Robson who was seated in a parked vehicle in a public place. Since there is nothing in the record to suggest that Raynolds used physical force or show of authority to restrict Robson’s liberty, Robson was objectively free to leave.”).

No genuine issue of material fact exists regarding whether Officer Dobbins’s initial contact with Plaintiff was a detention. Accordingly, Plaintiff’s constitutional rights were not violated by Officer Dobbins’s initial contact with Plaintiff.

(2) *Whether Reasonable Suspicion Existed to Warrant Detention of Plaintiff for a Field Sobriety Test*

Plaintiff next argues that a triable issue of fact exists regarding whether reasonable suspicion supported Officer Dobbins’s detention of Plaintiff for a field sobriety test. (Pl.’s Mem. ISO MSJ 11; Pl.’s Opp’n 7–8; Pl.’s Reply 2–3.) Defendants, however, contend that Officer Dobbins had reasonable

⁵ Plaintiff makes two statements in his declaration in opposition to Defendants’ motion that contradict his earlier deposition testimony on factual issues relevant to whether Officer Dobbins’s initial contact with Plaintiff constituted a detention. (*See, e.g.*, Bulfer Decl. ¶ 8 (“[I]f I had attempted to drive away[,] I would have been unable to pull out of the parking stall without colliding with the police car.”); *id.* ¶ (“I observed [Officer Dobbins] standing just outside my driver[’s] door (within inches) in such a way as to prevent me from exiting the car.”).) This testimony, if considered, would create a genuine issue of material fact that would preclude summary judgment. *See, e.g., Goines v. United States*, 964 A.2d 141, 145 (D.C. 2009) (“Certainly, the appellant was seized when the police took her keys and blocked her car.”); *People v. Gherna*, 784 N.E.2d 799, 808 (Ill. 2003) (holding that seizure of car’s occupants occurred where positioning of officers and their bicycles on both sides of car “prevented defendant from either exiting the vehicle or driving the vehicle away from the scene”); *Hawkins v. United States*, 663 A.2d 1221, 1225–26 (D.C. 1995) (holding that seizure of car’s occupant occurred where, *inter alia*, officers positioned themselves on both sides of car). However, the Court will not consider Plaintiff’s statements in his declaration because they contradict his earlier deposition testimony. *See Block v. City of L.A.*, 253 F.3d 410, 419 n.2 (9th Cir. 2001) (“A party cannot create a genuine issue of material fact to survive summary judgment by contradicting his earlier version of the facts.”).

1 suspicion to detain Plaintiff for a field sobriety test. (Defs.' Mem. ISO MSJ 7–8; Defs.' Opp'n 4–5.)

2 Initially, the Court finds that Plaintiff was seized when Officer Dobbins asked him to step out
3 of the car for a field sobriety test. From that point, a reasonable person in Plaintiff's position would
4 not have felt free to ignore Officer Dobbins and go about his business. *Bostick*, 501 U.S. at 437. This
5 detention was unconstitutional unless reasonable suspicion supported it. *See United States v. Arvizu*,
6 534 U.S. 266, 273 (2002); *Thompson v. Breshears*, 2009 WL 2581556, at *6 (E.D. Wash. Aug. 14,
7 2009) (holding that detention for field sobriety test requires reasonable suspicion).

8 The determination of whether the facts alleged could support a reasonable belief in the
9 existence of reasonable suspicion is a question of law. *Act Up!/Portland v. Bagley*, 988 F.2d 868, 873
10 (9th Cir. 1993). "Police may detain or seize an individual for brief, investigatory purposes, provided
11 that the officers making the stop have reasonable suspicion 'that criminal activity may be afoot.'" *United States v. Johnson*, 581 F.3d 994, 999 (9th Cir. 2009) (quoting *United States v. Orman*, 486
12 F.3d 1170, 1173 (9th Cir. 2007)). "Reasonable suspicion 'is formed by specific, articulable facts
13 which, together with objective and reasonable inferences, form the basis for suspecting that the
14 particular person detained is engaged in criminal activity.'" *United States v. Thompson*, 282 F.3d 673,
15 678 (9th Cir. 2002) (quoting *United States v. Rojas-Millan*, 234 F.3d 464, 468–69 (9th Cir. 2000)).
16 In determining whether reasonable suspicion exists, officers may "draw on their own experience and
17 specialized training to make inferences from and deductions about the cumulative information
18 available to them that 'might well evade an untrained person.'" *Arvizu*, 534 U.S. at 273 (quoting
19 *United States v. Cortez*, 449 U.S. 411, 418 (1981)). "Although an officer's reliance on a mere 'hunch'
20 is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required
21 for probable cause, and it falls considerably short of satisfying a preponderance of the evidence
22 standard." *Id.* at 274 (citations omitted).

23
24 Here, the Court finds that reasonable suspicion existed to warrant detention of Plaintiff for a
25 field sobriety test. When Officer Dobbins noticed Plaintiff's car, the car's taillights were on.
26 (Dobbins Dep. 57.) During his initial contact with Plaintiff, Officer Dobbins noticed that the keys
27 were in the car's ignition, the dash lights were illuminated, and the radio was playing. (*Id.* at 83.)
28 During his initial contact with Plaintiff, Officer Dobbins smelled alcohol, and Plaintiff admitted to

1 having consumed alcohol earlier in the evening. (Compl. ¶ 9; Bulfer Dep. 58; Dobbins Dep. 76.)
 2 Viewed as a whole in light of a trained officer's experience, the circumstances here support a finding
 3 of reasonable suspicion that criminal activity was afoot. Officer Dobbins articulated specific facts
 4 sufficient to form a basis for a reasonable suspicion that Plaintiff was violating San Diego Municipal
 5 Code section 85.10 (section 85.10)^{6,7} or had recently violated California Vehicle Code section 23152
 6 (section 23152).⁸ Thus, Officer Dobbins's detention of Plaintiff was objectively reasonable in light
 7 of the facts and circumstances confronting him. *Graham*, 490 U.S. at 397.

8 No factual dispute exists regarding the circumstances that gave rise the to reasonable suspicion
 9 necessary to briefly detain Plaintiff to investigate a potential violations of section 85.10 and section
 10 23152. Accordingly, Plaintiff's constitutional rights were not violated when he was detained for a
 11 field sobriety test.

12 (3) *Whether Probable Cause Supported Plaintiff's Arrest*

13 Plaintiff also argues that Officer Dobbins lacked probable cause to arrest Plaintiff, and
 14 therefore, Plaintiff's arrest was unlawful. (Pl.'s Mem. ISO MSJ 11–14; Pl.'s Opp'n 8–16; Pl.'s Reply
 15 3–9.) Defendants, on the other hand, contend that Plaintiff's arrest was supported by probable cause.
 16 (Defs.' Opp'n 5–8.)

17 “Under the Fourth Amendment, a warrantless arrest requires probable cause.” *United States*

18 ⁶ Under section 85.10, “No person who is under the influence of intoxicating liquor or narcotic
 19 drugs shall be in or about any motor vehicle, while such vehicle is in or upon any street or other public
 20 place.” San Diego, Cal. Mun. Code ch. 8, art. 5, § 85.10 [hereinafter § 85.10].

21 ⁷ Plaintiff argues that Officer Dobbins could not have used section 85.10 as a basis for
 22 Plaintiff's detention and subsequent arrest because section 85.10 is unconstitutionally vague and
 preempted by California law. (*See* Pl.'s Opp'n 8–13; Pl.'s Reply 3–8.) The Court addresses this
 argument *infra*.

23 ⁸ Under section 23152(a), “It is unlawful for any person who is under the influence of any
 24 alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to
 25 drive a vehicle.” Cal. Veh. Code § 23152(a). If Officer Dobbins had reasonable cause to believe
 26 Plaintiff had been driving under the influence, California Vehicle Code section 40300.5(e) authorized
 27 his arrest. *Id.* § 40300.5 (“[A] peace officer may, without a warrant, arrest a person when the officer
 28 has reasonable cause to believe that the person had been driving while under the influence of an
 alcoholic beverage . . . when any of the following exists: . . . (e) The person may destroy or conceal
 evidence of the crime unless immediately arrested.”); *see People v. Schofield*, 109 Cal. Rptr. 2d 429,
 435 (Cal. Ct. App. 2001) (“Vehicle code section 40300.5 subdivision (e) creates an exception to the
 presence requirement of Penal Code section 836 because evidence will be destroyed *by the simple*
passage of time unless the person is arrested.” (emphasis added)), *disapproved on other grounds in*
People v. Thompson, 135 P.3d 3, 14 n.3 (Cal. 2006).

1 *v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007). The determination of whether the facts alleged could
2 support a reasonable belief in the existence of probable cause is a question of law. *Act Up!/Portland*,
3 988 F.2d at 873. Probable cause to arrest exists if the arresting officers have knowledge or reasonably
4 trustworthy information sufficient to lead a prudent person to believe “that an offense has been or is
5 being committed by the person being arrested.” *Lopez*, 482 F.3d at 1072; *accord Beck v. Ohio*, 379
6 U.S. 89, 91 (1964). Although probable cause does not require conclusive evidence of guilt, ““mere
7 suspicion, common rumor, or even strong reason to suspect are not enough.”” *Edgerly v. City & Cnty.*
8 *of S.F.*, 599 F.3d 946, 953 (9th Cir. 2010) (quoting *Lopez*, 482 F.3d at 1072). As long as probable
9 cause exists at the time of the arrest, the arrest does not violate the Constitution even if the charges
10 are later dropped. *DelCastillo v. City & Cnty. of S.F.*, 2010 WL 1838939, at *6 (N.D. Cal. May 3,
11 2010).

12 “Because the probable cause standard is objective, probable cause supports an arrest so long
13 as the arresting officers had probable cause to arrest the suspect for *any criminal offense*, regardless
14 of their stated reason for the arrest.” *Edgerly*, 599 F.3d at 954 (emphasis added); *accord Devenpeck*
15 *v. Alford*, 543 U.S. 146, 153–55 (2004). “Probable cause, however, must exist still exist under some
16 specific criminal statute. It is therefore not enough that probable cause existed to arrest [the suspect]
17 for some metaphysical criminal offense; the [o]fficers must ultimately point to a particular statutory
18 offense.” *Edgerly*, 599 F.3d at 954 (citations omitted).

19 Here, Defendants contend that probable cause existed to arrest Plaintiff for violation of section
20 85.10. The Court agrees. When Officer Dobbins arrested Plaintiff, he had abundant probable cause
21 to believe Plaintiff’s conduct violated the terms of the ordinance. Section 85.10 provides that a person
22 commits an offense if he is (1) “in or about [a] motor vehicle,” (2) “in or upon any street or other
23 public place,” and (3) “under the influence of intoxicating liquor.” § 85.10. Plaintiff does not dispute
24 that he was in a motor vehicle in a public place, and Plaintiff admitted to having consumed alcohol.
25 (See Compl. ¶¶ 7–9.) Officer Dobbins’s field sobriety test of Plaintiff confirmed Officer Dobbins’s
26 suspicion that Plaintiff was impaired by alcohol. (Dobbins Dep. 86.) Under these circumstances, a
27 prudent person would have justifiably believed that Plaintiff had committed a completed violation of
28

1 section 85.10.⁹ Accordingly, Plaintiff's arrest was supported by probable cause.

2 Plaintiff contends that section 85.10 cannot be used to justify Plaintiff's arrest because it is
3 preempted by state law and unconstitutionally vague. (Pl.'s Opp'n 8–13; Pl.'s Reply 3–8.) Clearly
4 established Supreme Court law forecloses this argument. In *Michigan v. DeFillippo*, 443 U.S. 31, 34
5 (1979), the respondent was arrested for violation of a Detroit city ordinance. On interlocutory appeal,
6 the Michigan Court of Appeals held that the ordinance under which the respondent was arrested was
7 unconstitutionally vague. *Id.* Accordingly, the court remanded with instructions to suppress evidence
8 seized during a search incident to the respondent's arrest and quash the information. *Id.* at 34–35.
9 The state appealed. *Id.* at 35.

10 The Supreme Court held that, at the time the respondent was arrested, “there was abundant
11 probable cause to satisfy the constitutional prerequisite for an arrest.” *Id.* at 37. The Court rejected
12 the respondent's contention that the officer lacked probable cause because he should have known that
13 the ordinance was invalid and would be declared unconstitutional. *Id.* At the time of the respondent's
14 arrest:

15 [T]here was no controlling precedent that [the] ordinance was or was not
16 constitutional, and hence the conduct observed violated a presumptively valid
17 ordinance. A prudent officer, in the course of determining whether respondent had
18 committed an offense under all the circumstances shown by [the] record, should not
19 have been required to anticipate that a court would later hold the ordinance
20 unconstitutional.

21 *Id.* at 37–38; *see also Grossman v. City of Portland*, 33 F.3d 1200, 1209 (9th Cir. 1994) (“[W]hen a
22 city council has duly enacted an ordinance, police officers are ordinarily entitled to rely on the
23 assumption that the council members have considered the views of legal counsel and concluded that
24 the ordinance is a valid and constitutional exercise of authority.”). *But cf. Carey v. Nev. Gaming*

25 ⁹ Defendants also contend that probable cause existed to arrest Plaintiff for violation of
26 California Penal Code section 626.10(b) (section 626.10(b)), which makes it illegal for persons
27 including Plaintiff to “bring[] or possess[] any dirk, dagger, ice pick, or knife having a fixed blade
28 longer than 2 1/2 inches upon the grounds of, or within, any private university, the University of
California, the California State University, or the California Community Colleges.” Cal. Penal Code
§ 626.10(b). However, indulging every inference in Plaintiff's favor, a genuine issue of material fact
exists regarding whether the knife was in plain view at the time of Plaintiff's arrest. (*Compare* Isley
Dep. 29–30 (stating that he saw the knife through the driver's door window), *with* Bulfer Dep. 44–47
(stating that he drove the car approximately twenty times without noticing the knife).) If a jury were
to believe Plaintiff's testimony, then it could conclude that the facts and circumstances known to
Defendants at the time of Plaintiff's arrest did not establish probable cause to arrest Plaintiff for
violation of section 626.10(b).

1 *Control Bd.*, 279 F.3d 873, 881 (9th Cir. 2002) (“Although state officials who rely on statutes are
 2 generally presumed to act reasonably, an official may nevertheless be liable for enforcing a statute that
 3 is ‘patently violative of fundamental constitutional principles.’” (quoting *Grossman*, 33 F.3d at 1209)).

4 *DeFillippo* controls here. Even assuming, *arguendo*, that section 85.10 is preempted by state
 5 law or unconstitutionally vague, Plaintiff has cited no controlling precedent, extant at the time of
 6 Plaintiff’s arrest, holding the that the ordinance is preempted by state law or unconstitutional.¹⁰
 7 Officer Dobbins did not lack probable cause “simply because he should have known that the ordinance
 8 was invalid and [might] be judicially declared unconstitutional.” *DeFillippo*, 443 U.S. at 37.
 9 Plaintiff’s conduct violated a presumptively valid ordinance. Officer Dobbins had probable cause to
 10 arrest him.

11 Plaintiff also argues that, even if probable cause existed to arrest Plaintiff for violation of
 12 section 85.10, “he would nevertheless be entitled to recover for injuries he suffered which were
 13 independent of those caused by the crime that justified his arrest.” (Pl.’s Opp’n 15.) Thus, Plaintiff
 14 “would be entitled to pursue his claim as to the false DUI charge and the false knife charge, and
 15 recover any damages resulting therefrom.” (*Id.* at 16.) In support of his contention, Plaintiff cites
 16 *McKenzie v. Lamb*, 738 F.2d 1005, 1011 (9th Cir. 1984) (Kennedy, J.), in which the Ninth Circuit
 17 held:

18 [A]ppellants may recover for other injuries caused by acts independent of their arrest
 19 even if the arrests are found to be supported by probable cause. For example,
 20 appellants were charged with both [a misdemeanor and a felony]. The extra felony
 charge, if unjustified, may have caused injury independent of that caused by the
 misdemeanor arrest.

21 The Court agrees with Plaintiff in the abstract. It is true that the driving under the influence
 22 and California Penal Code section 626.10(b) charges, if unjustified, may have caused independent
 23 injury. However, a *malicious prosecution* claim, rather than a *false arrest* claim, is the proper vehicle

24 ¹⁰ Because probable cause existed to arrest Plaintiff for violation of section 85.10 regardless
 25 of the ordinance’s validity, the Court does not reach the issue of whether section 85.10 is *in fact*
 26 preempted by state law, *see Meyer v. Cal. and Hawaiian Sugar Co.*, 662 F.2d 637, 640 (9th Cir. 1981)
 (“Federal courts should not reach out unnecessarily to decide state law claims.”) (citing *United Mine*
 27 *Workers v. Gibbs*, 383 U.S. 715, 726 (1966)), or unconstitutionally vague, *see Greater New Orleans*
Broad. Ass’n, Inc. v. United States, 527 U.S. 173, 184 (1999) (“[W]e do not ordinarily reach out to
 28 make novel or unnecessarily broad pronouncements on constitutional issues when a case can be fully
 resolved on a narrower ground.”); *United States v. Withers*, 618 F.3d 1008, 1020 n.5 (9th Cir. 2010)
 (same).

1 through which to recover for injuries caused by unjustified criminal charges. *See Lassiter v. City of*
 2 *Bremerton*, 556 F.3d 1049, 1054 (9th Cir. 2000) (discussing elements of malicious prosecution claim
 3 under § 1983); *cf. Awabdy v. City of Adelanto*, 368 F.3d 1062, 1072 (9th Cir. 2004) (“In this circuit,
 4 nothing prevents [a plaintiff] from bringing *both* malicious prosecution claims and direct First and
 5 Fourteenth Amendment claims in the same § 1983 action.”). Put another way, that probable cause
 6 supported Plaintiff’s arrest does not undermine Plaintiff’s damages claims based on acts independent
 7 of his arrest. Plaintiff is entitled to pursue—and is pursuing in this action—a malicious prosecution
 8 claim to recover for injuries caused by allegedly unsupported charges filed after his arrest. But he
 9 cannot recover for these alleged injuries on a false arrest theory because Plaintiff’s arrest was
 10 supported by probable cause. *McKenzie* does not counsel otherwise.

11 Additionally, Plaintiff contends that, even if probable cause existed to arrest him for violation
 12 of section 85.10, he may still recover damages because state law does not authorize custodial arrest
 13 for violation of the ordinance. (Pl.’s Opp’n 15.) However, the constitutionality of Plaintiff’s arrest
 14 does not depend on whether Officer Dobbins conducted it in accordance with state law. *See Barry*
 15 *v. Fowler*, 902 F.2d 770, 772 (9th Cir. 1990). “Rather, the crucial inquiry is whether [Officer
 16 Dobbins] had probable cause to make the arrest.” *Id.* Here, Officer Dobbins had probable cause to
 17 arrest Plaintiff for violation of section 85.10. That state law did not authorize Plaintiff’s arrest does
 18 not provide a basis for a § 1983 claim.

19 Because Plaintiff’s arrest was supported by probable cause, Plaintiff’s false arrest claim fails
 20 as to all Defendants. *See McSherry v. City of Long Beach*, 584 F.3d 1129, 1136 (9th Cir. 2009).

21 (4) *Conclusion*

22 For the reasons stated, the Court **GRANTS** Defendants’ motion for summary judgment on
 23 Plaintiff’s unlawful seizure claim. Concomitantly, Plaintiff’s motion for partial summary judgment
 24 against Defendants on this claim is **DENIED**.

25 C. *Unlawful Search*

26 Defendants also argue that they are entitled to summary judgment on Plaintiff’s unlawful
 27 search claim because “the officers had probable cause to search the car” and “the search was valid as
 28 a search incident to arrest.” (Defs.’ Mem. ISO MSJ 13.) Alternatively, Defendants argue that they

1 are entitled to qualified immunity on Plaintiff's unlawful search claim. (Defs.' Mem. ISO MSJ 13–15;
 2 Defs.' Reply 8.) Plaintiff, however, contends that genuine issues of fact preclude summary judgment
 3 on this claim. (Pl.'s Opp'n 16–17.)

4 Here, the Court need not reach the question of whether Defendants' search of Plaintiff's car
 5 violated the Fourth Amendment because the law prohibiting a search incident to arrest was not clearly
 6 established when the search occurred. Citing *Arizona v. Gant*, — U.S. —, 129 S. Ct. 1710 (2009),¹¹
 7 Plaintiff contends that “the search clearly violated the Fourth Amendment because [Plaintiff] was
 8 secured in the police car at the time of the search.” (Pl.'s Opp'n 17.) However, when Defendants
 9 searched Plaintiff's car in 2008, the Supreme Court “interpreted the Fourth Amendment to
 10 categorically permit an officer to search the passenger compartment of a vehicle incident to the lawful
 11 arrest of a recent occupant of that vehicle.” *Brown v. Romeoville*, 2010 WL 431474, at *6 (N.D. Ill.
 12 Feb. 1, 2010) (citing *Thorton v. United States*, 541 U.S. 615, 620–21 (2004); *New York v. Belton*, 453
 13 U.S. 454, 460 (1981)). And as the Supreme Court noted in *Gant*, “[b]ecause a broad reading of *Belton*
 14 has been widely accepted, the doctrine of qualified immunity will shield officers from liability for
 15 searches conducted in reasonable reliance on that understanding.” 129 S. Ct. at 1722 n.11.

16 The Court has already determined Defendants had probable cause to arrest Plaintiff for
 17 violation of section 85.10. Relying on the “broad reading of *Belton*,” Defendants searched Plaintiff's
 18 car incident to arrest. *Gant*, 129 S. Ct. at 1722 n.11. Because the alleged unlawfulness of Defendants'
 19 conduct was not clearly established at the time of the search, *see Ingram v. City of L.A.*, 331 F. App'x
 20 462, 463 n.1 (9th Cir. 2009), Defendants are entitled to qualified immunity on Plaintiff's unlawful
 21 search claim.

22 Almost as an afterthought, Plaintiff also contends that the search violated the Fourth
 23 Amendment because Defendants searched Plaintiff's car twice, and “there was no justification or
 24 probable cause for the second search of the car.” (Pl.'s Opp'n 17.) Plaintiff cites no authority—nor
 25 is the Court aware of any—for the proposition that Defendants could only search Plaintiff's car once
 26 incident to his arrest. Accordingly, this argument lacks merit.

27
 28 ¹¹ In *Gant*, the Supreme Court held that, incident to a lawful arrest, an officer may only
 “conduct a vehicle search when an arrestee is within reaching distance of the vehicle or it is reasonable
 to believe the vehicle contains evidence of the offense of arrest.” 129 S. Ct. at 1721.

1 No factual dispute exists regarding the circumstances surrounding Plaintiff's unlawful search
2 claim. Accordingly, the Court **GRANTS** Defendants' motion for summary judgment on this claim.

3 ***D. Malicious Prosecution***

4 Next, Defendants argue that they are entitled to summary judgment on Plaintiff's malicious
5 prosecution claim because "Plaintiff cannot establish all of the elements of the claim for malicious
6 prosecution under [§] 1983." (Defs.' Mem. ISO MSJ 16; *accord* Defs.' Reply 8–9.) Plaintiff,
7 however, contends that "the disputed facts preclude summary judgment on Plaintiff's malicious
8 prosecution claim." (Pl.'s Opp'n 18.)

9 "In order to prevail on a § 1983 claim of malicious prosecution, a plaintiff 'must show that the
10 defendants prosecuted [him] with malice and without probable cause, and that they did so for the
11 purpose of denying [him] equal protection or another specific constitutional right.'" *Lassiter*, 556
12 F.3d at 1054 (alterations in original) (quoting *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th
13 Cir. 1995)); *accord Usher v. City of L.A.*, 828 F.2d 556, 561–62 (9th Cir. 1987). However,
14 "[m]alicious prosecution, by itself, does not constitute a due process violation . . ." *Freeman*, 68 F.3d
15 at 1189; *cf. Albright v. Oliver*, 510 U.S. 266, 268 (1994) (plurality) (declining to recognize substantive
16 due process right to be free from criminal prosecution except upon probable cause). "Malicious
17 prosecution actions are not limited to suits against prosecutors but may be brought, as here, against
18 other persons who have wrongfully caused the charges to be filed." *Awabdy*, 368 F.3d at 1067 (citing
19 *Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119, 1126–27 (9th Cir. 2002)).

20 Here, Plaintiff seeks to hold Defendants liable for malicious prosecution because Defendants
21 allegedly filed "false police reports which [sic] caused Plaintiff to be falsely charged with criminal
22 violations and subjected to possible DMV sanctions." (Compl. ¶ 18.) This claim fails as a matter of
23 law because Plaintiff does not allege—let alone offer evidence—that Defendants prosecuted him "for
24 the purpose of denying [him] equal protection or another specific constitutional right.'" *Lassiter*, 556
25 F.3d at 1054 (alteration in original). Rather, Plaintiff rests his malicious prosecution claim entirely
26 on the allegation that Defendants fabricated the evidence against him. (*See* Pl.'s Opp'n 17–18.) But
27 even assuming, *arguendo*, that Defendants fabricated the evidence against Plaintiff, that fact alone
28 would not suffice to make out a malicious prosecution claim under § 1983. *See Awabdy*, 368 F.3d at

1 1069 (“[N]o substantive due process right exists under the Fourteenth Amendment to be free from
2 prosecution without probable cause.”); *Albright*, 510 U.S. at 268 (same).

3 No genuine issue of material fact exists regarding whether Defendants prosecuted Plaintiff for
4 the purpose of depriving him of any constitutional right. Accordingly, the Court **GRANTS**
5 Defendants’ motion for summary judgment on Plaintiff’s malicious prosecution claim.

6 **2. State Claims**

7 Plaintiff also alleges three state law claims. First, Plaintiff claims that “Defendants were
8 negligent and breached their duty of due care owed to Plaintiff.” (Compl. ¶ 23.) Second, Plaintiff
9 claims that he was falsely arrested and falsely imprisoned without probable cause, in violation of
10 California law. (Compl. ¶ 26.) Third, Plaintiff claims that Defendants violated California Civil Code
11 section 52.1. (Compl. ¶ 30.)

12 **A. Negligence**

13 Defendants contend that they are entitled to summary judgment on Plaintiff’s negligence claim
14 because they are immune from suits for negligence under California Government Code section 821.6
15 (section 821.6). (Defs.’ Mem. ISO MSJ 19–21; Defs.’ Reply 9.) Plaintiff, of course, disagrees. (Pl.’s
16 Opp’n 23–24.)

17 *(1) California Government Code Section 821.6*

18 Under section 821.6, “[a] public employee is not liable for injury caused by his instituting or
19 prosecuting any judicial or administrative proceeding within the scope of his employment, even if he
20 acts maliciously and without probable cause.” Cal. Gov’t Code § 821.6. Section 821.6’s “principal
21 function is to provide relief from malicious prosecution.” *Blankenhorn v. City of Orange*, 485 F.3d
22 463, 487–88 (9th Cir. 2007) (citing *Kayfetz v. California*, 203 Cal. Rptr. 33, 36 (Cal. Ct. App. 1984)).
23 But the section “also extends to actions taken in preparation for formal proceedings,” *Amylou R. v.*
24 *Cnty. of Riverside*, 34 Cal. Rptr. 2d 319, 321 (Cal. Ct. App. 1994), including actions “incidental to the
25 investigation of . . . crimes,” *id.* at 322. Section 821.6 does not apply, however, to alleged tortious
26 conduct that occurs during an arrest. *See Blankenhorn*, 485 F.3d at 488 (“Here, the alleged tortious
27 conduct occurred during an arrest, not an investigation. . . . [T]his is not the sort of conduct to which
28 section 821.6 immunity has been held to apply.”); *cf. Sullivan v. Cnty. of L.A.*, 527 P.2d 865, 870 (Cal.

1 1974) (“[T]he history of section 821.6 demonstrates that the Legislature intended the section to protect
2 public employees from liability only for Malicious prosecution and not for False imprisonment.”).

3 Here, because Plaintiff’s negligence claims are based on acts that allegedly happened during
4 his arrest, not pursuant to an investigation into his guilt, section 821.6 does not confer immunity from
5 those claims upon Defendants. This failure of immunity, however, does not end the Court’s inquiry;
6 rather, the Court must turn to the merits of Plaintiff’s negligence claims.

7 (2) *The Merits*

8 Plaintiff’s complaint alleges that Defendants owed Plaintiff a duty of care, breached that duty,
9 and caused Plaintiff injury. (Compl. ¶ 23.) The elements of a claim for negligence are (1) “a legal
10 duty to use due care,” (2) “a breach of such legal duty,” and (3) “the breach as the proximate or legal
11 cause of the resulting injury.” *Ladd v. Cnty. of San Mateo*, 911 P.2d 496, 498 (Cal. 1996) (internal
12 quotation marks omitted). If probable cause supported an arrest, a negligence claim based on that
13 arrest fails as a matter of law. *See Harvey v. City of Fresno*, 2010 WL 892114, at *14–15 (E.D. Cal.
14 Mar. 9, 2010).

15 The Court has already determined that Defendants had probable cause to arrest Plaintiff.
16 Accordingly, to the extent Plaintiff’s negligence claim is based on his arrest, the claim fails as a matter
17 of law.¹² *Id.* Accordingly, the Court **GRANTS** Defendants’ motion for summary judgment on
18 Plaintiff’s negligence claim.

19 **B. False Arrest**

20 Defendants next argue that they are entitled to summary judgment on Plaintiff’s false arrest
21 claim because it is barred by the statute of limitations and because probable cause supported Plaintiff’s
22 arrest. (Defs.’ Mem. ISO MSJ 21–22; Defs.’ Reply 9–10.) Plaintiff contends that this claim is timely.
23 (Pl.’s Opp’n 20.)

24 “The elements of a tortious claim of false imprisonment are: (1) the nonconsensual, intentional

25 ¹² Plaintiff also suggests that “a jury could find that Officer Dobbins was negligent when he
26 checked the box and signed the form indicating he observed Plaintiff driving.” (Pl.’s Opp’n 23.)
27 However, section 821.6 affords public employees immunity against malicious prosecution claims,
28 even if the employees act maliciously or without probable cause. Cal. Gov’t Code § 821.6;
Blankenhorn, 485 F.3d at 487–88. Absent contrary authority, the Plaintiff may not circumvent section
821.6 simply by styling what is clearly a malicious prosecution claim as a negligence claim.
Accordingly, this aspect of Plaintiff’s claim also fails as a matter of law.

1 confinement of a person, (2) without lawful privilege, and (3) for an appreciable period of time,
 2 however brief.” *Easton v. Sutter Coast Hosp.*, 95 Cal. Rptr. 2d 316, 323 (Cal. Ct. App. 2000). “False
 3 arrest is not a different tort; it is merely ‘one way of committing a false imprisonment.’” *Martinez v.*
 4 *City of L.A.*, 141 F.3d 1373, 1379 (9th Cir. 1998) (quoting *Collins v. City & Cnty. of S.F.*, 123 Cal.
 5 Rptr. 525, 526 (Cal. Ct. App. 1975)). Whether a plaintiff’s confinement pursuant to arrest was
 6 “without lawful privilege” depends on whether his arrest was lawful. *See* Cal. Pen. Code §§ 836.5(b),
 7 847(b); *Moore v. City & Cnty. of S.F.*, 85 Cal. Rptr. 281, 284 (Cal. Ct. App. 1970) (“Imprisonment
 8 based upon a lawful arrest is not false, and is not actionable in tort.”). “An arrest is valid if supported
 9 by probable cause.” *People v. Kraft*, 5 P.3d 68, 103 (Cal. 2000).

10 A one-year statute of limitations applies to false imprisonment claims. Cal. Civ. Proc. Code
 11 § 340(c). “A cause of action for false arrest accrues on the arrest and is actionable immediately.”
 12 *Mohlman v. City of Burbank*, 225 Cal. Rptr. 109, 110 n.1 (Cal. Ct. App. 1986).

13 Plaintiff’s false arrest claim fails for two reasons. First, the Court has already determined that
 14 Defendants had probable cause to arrest Plaintiff for violation of section 85.10. Thus, Plaintiff’s arrest
 15 was privileged, and his false arrest claim fails as a matter of law. *See* Cal. Pen. Code §§ 836.5(b),
 16 847(b); *Kraft*, 5 P.3d at 103; *Moore*, 85 Cal. Rptr. at 284. Second, Plaintiff’s false arrest claim is
 17 barred by the one-year statute of limitations applicable to false imprisonment claims. Plaintiff’s arrest
 18 occurred—and his claim accrued—on April 20, 2008. (*See* Compl. ¶¶ 6, 8, 10; *Mohlman*, 225 Cal.
 19 Rptr. at 110 n.1.) Plaintiff filed his complaint on June 9, 2009, more than one year after his false
 20 arrest claim accrued. (*See* Compl.) Accordingly, this claim is also time-barred.¹³

21 No genuine issue of material fact exists regarding the facts underlying Plaintiff’s false arrest
 22 claim. Accordingly, the Court **GRANTS** Defendants’ motion for summary judgment on this claim.
 23 Concomitantly, Plaintiff’s motion for partial summary judgment against Defendants on this claim is
 24 **DENIED**.

25
 26 ¹³ Plaintiff contends that the Court should apply to Plaintiff’s false arrest claim the two-year
 27 statute of limitations applicable to personal injury claims. (Pl.’s Opp’n 24; *see* Cal. Civ. Proc. Code
 28 § 335.1.) This contention lacks merit under California law. Plaintiff’s false arrest claim simply is not
 a personal injury claim encompassed by California Civil Procedure Code section 335.1; rather, it is
 a false imprisonment claim encompassed by California Civil Procedure Code section 340(c). *See*
Collins, 123 Cal. Rptr. at 526; *Moore*, 85 Cal. Rptr. at 284.

1 **C. California Civil Code Section 52.1**

2 Finally, Defendants contend that they are entitled to summary judgment on Plaintiff's
3 California Civil Code section 52.1 (section 52.1) claim because Plaintiff "disavowed any threats,
4 intimidation[,] or coercion by [D]efendants." (Defs. Mem. ISO MSJ 22; *accord* Reply 10.)
5 According to Plaintiff, however, "a jury could find that the officers here violated Plaintiff's rights by
6 intimidation or coercion." (Pl.'s Opp'n 25.)

7 "California Civil Code [section] 52.1 provides that if a person interferes, or attempts to
8 interfere, by threats, intimidation, or coercion with the exercise or enjoyment of the constitutional or
9 statutory rights of any individual, the individual may sue for damages independently of any other
10 action that is available." *Xue Lu v. Powell*, 621 F.3d 944, 950 (9th Cir. 2010). However, "[s]ection
11 52.1 does not provide any substantive protections; instead, it enables individuals to sue for damages
12 as a result of constitutional violations." *Reynolds v. Cnty. of San Diego*, 84 F.3d 1162, 1170 (9th Cir.
13 1996), *overruled on other grounds in Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997);
14 *accord Nelson v. City of Davis*, 709 F. Supp. 2d 978, 993 (E.D. Cal. 2010). The existence of threats,
15 intimidation, or coercion is an essential element of a section 52.1 claim. *See Venegas v. Cnty. of L.A.*,
16 87 P.3d 1, 14 (Cal. 2004); *City & Cnty. of S.F. v. Ballard*, 39 Cal. Rptr. 3d 1, 21 (Cal. Ct. App. 2006)
17 ("Civil Code section 52.1 does '[require] an attempted or complete act of interference with a legal
18 right, accompanied by a form of coercion.'" (alteration in original) (quoting *Jones v. Kmart Corp.*, 949
19 P.2d 941, 943–44 (Cal. 1998))).

20 Like Plaintiff's false arrest claim, Plaintiff's section 52.1 claim fails for two reasons. First,
21 the Court has already determined that the undisputed facts warrant summary judgment in Defendants'
22 favor on Plaintiff's constitutional claims. Absent any underlying constitutional violations, Plaintiff's
23 section 52.1 claim fails as a matter of law. *See Sholtis v. City of Fresno*, 2009 WL 4030674, at *12
24 (E.D. Cal. Nov. 18, 2009) (dismissing section 52.1 claim in the absence of valid constitutional claims).
25 Second, as Defendants point out, Plaintiff has offered no evidence of any threats, intimidation, or
26 coercion by Defendants. In fact, Plaintiff testified that Officer Dobbins was "professional" and that
27 nothing about his behavior was abusive in nature. (Bulfer Dep. 88.) Similarly, Plaintiff testified that
28 Corporal Garcia was cordial and in no way abusive. (*Id.* at 90–91.) Plaintiff did not interact with

1 Sergeant Isley. (*Id.* at 91.) Even assuming, *arguendo*, that Defendants violated Plaintiff's
2 constitutional rights, no reasonable jury presented with these statements could return a verdict for
3 Plaintiff on his section 52.1 claim. *Anderson*, 477 U.S. at 248.

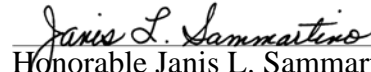
4 No genuine issue of material fact exists regarding the facts underlying Plaintiff's section 52.1
5 claim. Accordingly, the Court **GRANTS** Defendants' motion for summary judgment on this claim.

6 **CONCLUSION**

7 For the reasons stated, the Court **GRANTS** Defendants' motion for summary judgment in its
8 entirety. Plaintiff's motion for partial summary judgment against Defendants is **DENIED**. This Order
9 concludes the litigation in this matter. The Clerk **SHALL** close the file.

10 **IT IS SO ORDERED.**

11
12 DATED: February 7, 2011

13 
14 Honorable Janis L. Sammartino
United States District Judge
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